

based on monthly submissions. The new rules describe an equivalent LTS for each eligible service area with annual adjustments for 1998 and 1999 to reflect the annual percentage change in the actual nationwide average loop cost as filed by the fund administrator. It is not clear whether these annual adjustments are to be used to adjust payments or to establish the size of LTS support with payments from the “pooled” common line revenue based on monthly submissions. The RTC believes the latter, which is consistent with current pool practices, would be most representative. Further, to the extent the contribution requirement adds a material amount to the carrier common line rate, (¶ 306) the LTS must be adjusted accordingly.

IX. THE COMMISSION’S IMPLEMENTATION OF COMPETITIVE NEUTRALITY IS SKEWED TO DISADVANTAGE ILECS.

The Commission states that it adopts competitive neutrality as an additional guiding principle in this proceeding , reasoning that the principle is embodied in Sections 254 and 214.³⁷ The Commission explains that the principle means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.³⁸ The Commission’s assertion that it is applying the principle does not comport with its decision on other aspects of the Order. The Commission’s interpretation of “owned facilities” together with the interconnection pricing rules favor non-incumbents over incumbents by permitting non-incumbents to enjoy “eligible carrier” status without making the types of facilities based investments that incumbents have made. The Commission’s acceptance of the wireless carriers’ suggestion that the states should designate

³⁷ Id. at 48.

³⁸ *Order* ¶ 47.

portions of noncontiguous rural telephone company study areas as “service areas” is yet another example of how it violates its own competitive neutrality principle in this proceeding. The Commission’s overall bias against ILECs throughout the Order indicates that it should revisit its application of the competitive neutrality principle because it is meaningless if, as applied, it always produces benefits for competitors at the expense of the ILECs.³⁹

X. THE UNIVERSAL SERVICE ADMINISTRATOR SHOULD HAVE FLEXIBILITY TO DETERMINE THE MOST EFFECTIVE STAFFING AND ORGANIZATIONAL STRUCTURE.

In the Order the Commission adopted the Joint Board’s recommendation that it appoint NECA as interim administrator of the universal service support mechanisms and create an advisory committee to assist in selection of a permanent administrator. The RTC is concerned that the Commission’s attempts to micro manage the operation of the interim administrator will necessarily result in delays, inefficiencies and lack of focus that greatly endangers the prospects for a smooth start to the support programs for schools, libraries and rural health care providers.⁴⁰

In the process of describing the procedures by which educational institutions will obtain

³⁹ The Commission has also violated this principle in other rulemakings that involve its duty to promote universal service. For example, in its Second Report and Order and Further Notice of Proposed Rulemaking in In the Matter of Revision of Part 22 and Part 90 of the commission’s Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18 (FCC 97-59) released February 24, 1997, the Commission favored paging providers over incumbent LECs by deciding to auction frequencies used to provide Basic Exchange Telecommunications Radio Services (BETRS) and relegating the BETRS service to a secondary status despite the fact that BETRS was established to promote universal service.

⁴⁰ The RTC, in conjunction with the United States Telephone Association, has twice written to the Chairman expressing concern over the delay in implementing the school program. There has been no response to date. Letters to Chairman Hundt from John F. O’Neal, Michael E. Brunner, John N. Rose and Roy Neal , dated January 7, 1997 and June 11, 1997.

support, the Order requires that the administrator select a subcontractor.⁴¹ It may well be that the expertise may be obtained quickest through a contractor, but that is a judgement the Administrator should make, as well as the judgement as to when to use direct hire.

XI. THE CONTINUED STUDY OF COMPETITIVE BIDDING IS UNWARRANTED.

There is no justification for the Commission's decision to continue examining the use of competitive bidding as a means of choosing eligible carriers. There is no industry support for this idea and no legal basis for the use of auctions to decide what carriers are eligible for federal support.⁴² In fact, highly erratic competitive bidding is directly at odds with the Act's requirement that the Commission establish "specific, predictable, and sufficient"⁴³ support mechanisms. Additionally, the authority to designate eligible carriers is given to the states, not the Commission.⁴⁴ Section 214 does not even hint that Congress intended that state commissions charged with "designating" eligible carriers for specific "service areas" should substitute unpredictable auctions for the careful weighing of the public interest that Section 214(e) requires. The Commission's recent experience with results in the broadband PCS and Wireless Communications Services auctions are a warning that the theoretical results predicted by auction

⁴¹ *Order* ¶ 865.

⁴² Section 309(j) of the Act is evidence that Congress knows when to authorize competitive bidding as an alternative to comparative hearings and other procedural mechanisms for deciding public interest issues.

⁴³ 47 U.S.C. Section 254(b)(5).

⁴⁴ 47 U.S.C. Section 214(e).

proponents may fall short of the reality, disappoint proponents and disserve the public interest as well.⁴⁵

Even if the Commission had such authority or if it works with the states to compel all state designated eligible telecommunications carriers to bid, competitive bidding cannot satisfy its duty to ensure that consumers receive “quality services.”⁴⁶ The goal of any least cost bidder implicitly conflicts with the obligation to provide the highest level of service. Additionally, support is unlikely to be “sufficient.” Since competitive bidding envisions that all eligible carriers will be limited to low bid support, the system invites cream skimming and degradation of service for those high cost customers that will not be targeted by the low cost bidder.

XII. CARRIERS SHOULD NOT BE REQUIRED TO PROVIDE TOLL CONTROL AT ANY TIME.

The Order provides that carriers currently incapable of providing toll-limitation services must add the capability to their switches to provide at least toll blocking in any switch upgrades.⁴⁷ There is no known switch modification which will provide a LEC with the capability to determine, in real time, the accumulated toll billings of any subscriber, even where the LEC provides billing and collection for some of the IXC's serving its subscribers. The Commission should revise its rules to exclude “toll control” from “toll limitation” services.

⁴⁵ See, In the Matter of Amendment of Part 1 of the Commission's Rules on Competitive Bidding Proceeding, (WT 97-82), Public Notice, (DA 97-679), released June 2, 1997 where the Commission seeks comments on what measures it might take to accommodate defaulting bidders in the PCS C block auctions. Also, the Commission is aware that it only raised \$13.6 million of the \$1.8 billion Congress expected it to raise in the Wireless Communications Services auctions.

⁴⁶ 47 U.S.C. Section 254(b)(1).

⁴⁷ Report and Order ¶ 388.

CONCLUSION

For the above mentioned reasons, the RTC requests reconsideration of the Report and Order.

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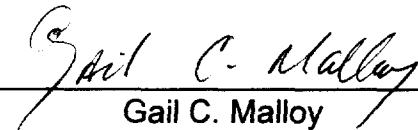
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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Petition for Reconsideration and Clarification of the Rural Telephone Coalition in CC Docket No. 96-45 was served on this 17th day of July 1997, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:



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